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09/777,418	02/06/2001	Grant D. Green	GDG01.US1	6962

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EXAMINER
WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	2

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/777,448	Applicant(s) GREEN
	Examiner S. WEINSTEIN	Group Art Unit 1761

—The MAILING DATE of this communication appears on th cover sheet beneath the correspondence address—

P riod for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☑ Claim(s) 1-24 is/are pending in the application.

Of the above claim(s) 12-18 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-11, 19-24 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)–(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)–(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Atta hment(s)

☐ Information Disclosure Statement(s), PTO–1449, Paper No(s). _____

☑ Notice of Reference(s) Cited, PTO–892

☐ Notice of Draftsperson's Patent Drawing Revi w, PTO–948

☐ Int rview Summary, PTO–413

☐ Notice of Informal Patent Application, PTO–152

☐ Oth r _____

Office Action Summary

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I, wherein the product is compressed into a regular solid block as shown, for example, in Figure I.

Species II, wherein the product is free flowing as shown, for example, in Figure 2.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Currently, claims 1-6 are generic.

During a telephone conversation with Mr. Green on 5/16/02 a provisional election was made with traverse to prosecute the invention of Species II, claims 1-11 and 19-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Pichardo (2,745,751).

In regard to claim 1, Pichardo discloses an article of manufacture comprising a pre-measured portion (e.g. one teaspoonful and a half teaspoonful) of sugar which is a conventional granular baking ingredient. This is all claim 1 positively recites.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pichardo (1751).

In regard to claims 2-4, these claims differ from Pichardo in the particular amount of pre-measured portions put into each container. Pichardo discloses providing several containers wherein several containers contain different pre-measured amounts of ingredients so that the consumer then has the option of combining the ingredients from one or more containers to provide varying amounts of ingredients. Pichardo is thus not seen to be limited to one teaspoon and/or a half teaspoon but rather is seen to be a general teaching that one can provide varying amounts and any amount of the same product in different containers to give flexibility in the amount of product used. The particular pre-measured amounts would therefore have been an obvious function of the conventional product selected and its conventional intended use which would include the quantity of the final product, etc. As for the particular ingredients, Pichardo disclosed regular sugar in varying amounts which gives the consumer the option of how sweet to make the beverage. However, as noted above, in regard to the particular amount, Pichardo is not seen to be limited to sugar but instead is seen to be a general teaching for one of ordinary skill in the art that any ingredient one desires to package can be packaged in a series of containers which can contain the same or a variety of different pre-measured amounts to enable the consumer to

have the flexibility of putting together differing amounts of the product. Stated somewhat differently, once it is known to package sugar for this purpose, to package any other conventional product in this way would have been obvious. Claim 7 recited that the pre-measured amount of loosely packed brown sugar is equivalent to a pre-measured amount of firmly-packaged brown sugar. Pichardo teaches the same thing only with regular sugar. That is, the free flowing sugar of Pichardo would be equivalent to say one teaspoonful full of sugar that fully fills a teaspoon (i.e. a level teaspoonful of sugar). With the teaching of Pichardo, one knows that one is getting a teaspoonful or a half teaspoon full (or variations thereof) of sugar, so that one would not have to measure the sugar. This is exactly what applicant is doing as well.

Claims 19 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Food or Reference V or Reference W, all of whom teach a plurality of bags, each comprising a pre-measured portion of a granular baking ingredient (i.e. sugar).

Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Reference V or Reference W, both of whom teach brown sugar.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Food, Reference V or Reference W, all further in view of Pichardo for the reasons given above. That is, the particular amount of product is seen to have been an obvious matter of choice and an obvious function of its intended use. Similarly for the number of packages and whether the packages contain an identical amount of product or vary between the packages.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Food or Reference V or Reference W, all further in view of Modern Packaging, Tremaine (G.B. 24151), Salfisberg (AUSTRALIA 113 301), Knoop et al (2,791,324) and Cozzie (5,664,670) who are all relied on to teach it was notoriously old to provide connected packages and to modify Food, Ref. V or Ref. W for its art recognized and applicants intended function would have been obvious.

The remainder of the references are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 305-0661.

Weinstein/sp
6/18-7/2
July 3, 2002

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
7/8/02